IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 377 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRABHATSINH NISHANSINH RAJPUT

Versus

STATEE OF GUJARAT

Appearance:

MR SUNIL K SHAH for Petitioner

MR KG SHETH, Learned APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 28/09/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Articles 14 and 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 for quashing the externment order passed by the Deputy Commissioner of Police in Externment Case No. 140 of 1999 on 30.9.1999 against the petitioner externing him

out of the limits of the area indicated in the order. The said order was confirmed in Appeal before the Secretary, Home Department, Gujarat State under Section 60 of the Bombay Police Act,1951 (for short "the said Act") on 14.3.2000.

2. The petitioner has challenged said two orders in this petition. It has been contended that notice was issued by the Assistant Commissioner of Police and the ultimate order was passed by the Deputy Commissioner of Police without any reason and, therefore, the said order is required to be quashed. It is further contended that proper opportunity was not given and there was no application of mind. That therefore, the petition be allowed and the orders passed by the aforesaid two authority be quashed and set aside.

3. On receiving the petition, rule was issued on 18.5.2000 and at the request of the learned advocate, R & P was called for by an order dated 7.7.2000. Mr. K.G.Sheth, learned APP appears for respondents. I have heard learned advocates for the parties and have perused the papers.

4. Learned advocate for the petitioner has argued that notice was issued under Section 59 of the said Act by the Assistant Commissioner of Police which can be gathered from page-9, the reply filed by the petitioner on 12.2.1999. This shows that notice was issued by the Assistant Commissioner of Police. If we turn to page-14 it can be gathered that order of externment has been passed on 30.9.2000 by the Deputy Commissioner of Police. It seems that though the notice was issued under Section 59 of the said Act by the Assistant Commissioner of Police, the ultimate order has been passed by the Deputy Commissioner of Police under Section 56 of the said Act. No reason has been assigned as to why the matter was entertained by the Deputy Commissioner of Police though the matter was initiated by the Assistant Commissioner of Police. There is nothing on record to show that the said matter was transferred from one office to another by the competent authority.

5. On this aspect of the case, the learned advocate for the petitioner has relied upon a decision of this court (Coram : D.C.Srivastava,J.) in the case of Hussainmiya @ Jago Razakmiya Qadri Vs. State of Gujarat & Ors. reported in 1999 (2) GLH 786. The said observation and finding of decision in para.6 of the judgment may be reproduced for ready reference as follows :

Para.6.

"Coming to the first stage, if the show cause notice is examined and the externment order is perused, it prima facie appears that the show cause notice was issued by the Assistant Commissioner of Police (Easter Division) Rajkot City: whereas the impugned order was passed by the Deputy Commissioner of Police, Rajkot city, Rajkot. It thus appears from the record that the impugned order was not passed by the authority who issued the show cause notice after entertaining subjective satisfaction that it was necessary to extern the petitioner from the three districts. No affidavits has been filed explaining that the externing authority was actually the successor of the authority who issued the show cause notice. There is no material on record to infer that the authority who is issued the show cause notice was transferred and thereafter no other officer was posted to succeed him and his business was allocated to the externing authority in addition to his work. Thus from the material on record as it exists today, it can be said that the subjective satisfaction before issuing the show cause notice was entertained by one authority; whereas the externment order was passed by another authority."

6. In the case before me also, the notice was issued by the Assistant Commissioner of Police and final order has been passed by the Deputy Commissioner of Police. It is not explained as to why the matter was transferred from Assistant Commissioner of Police to Deputy Commissioner of Police. Mr. K.G.Sheth, learned APP has argued that the Assistant Commissioner of Police is subordinate to the Deputy Commissioner of Police, but that would not solve the problem. The question is that as to why the matter was heard by the Deputy Commissioner of Police though it was initiated by the Assistant Commissioner of Police. It is also not explained as to why the matter was transferred from the Assistant Commissioner of Police to Deputy Commissioner of Police and as to who transferred the same. These things are not on record. No affidavit has been filed with respect thereto.

7. In that view of the matter, there is no reason to

differ from the decision recorded by this Court also in the above referred case. On following the said decision, I am of the view that this would be a ground for quashing the order of the externment of the petitioner in the light of the decision of this Court referred to hereinabove.

8. In the aforesaid view of the matter, this petition is allowed. The order of externment dated 30.9.1999 passed by the Deputy Commissioner of Police in Externment Case No.140 of 1999 and confirmed in Appeal by the first respondent on 14.3.2000 are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.P.Buch,J)
(vipul)